

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DIVISION OF THE  
WESTERN DISTRICT OF MISSOURI.

UNITED STATES OF AMERICA, Plaintiff,

vs

T. J. PENDERGAST, R. E. O'MALLEY, A. L. McCORMACK, Defendants.

No. 14,912.

MOTION TO STAY PROCEEDINGS HEREIN AND TO CONTINUE THIS CASE AS TO  
THE DEFENDANT, T. J. PENDERGAST, FOR THE PURPOSE OF PERMITTING THIS  
DEFENDANT TO APPLY FOR EXECUTIVE CLEMENCY

Comes now T. J. Pendergast, one of the defendants herein, and moves the Court to  
stay proceedings herein and withhold further action in this case for the purpose of  
permitting this defendant to make application for executive clemency and for such time  
as is necessary for the Executive Department to act thereon; and for grounds of such  
motion defendant states:

That on the 7th day of April, 1939, an indictment was returned in the Federal Court for  
the Western Division of the Western District of Missouri against this defendant, charging  
him in two counts with the Federal offense of income tax evasion; that, while said  
indictment was pending and before trial thereon, defendant's counsel, with the  
knowledge, consent and approval of this defendant, conferred with the Honorable  
Maurice Milligan, then United States District Attorney for the Western Division of the  
Western District of Missouri and in charge, as the representative of the United States  
Government, of the prosecution of defendant under said indictment and of all  
investigations then being made of defendant to ascertain what, if any, other Federal  
offenses had been committed by him, for the purpose of discussing with said United  
States District Attorney the possibility of defendant's entering a plea of guilty to the  
indictment theretofore returned against him; that during the discussion which followed  
between this defendant's counsel and the U.S. District Attorney, defendant's counsel  
stated that the defendant would enter a plea of guilty on both counts of the indictment if  
the defendant could be assured by the U.S. District Attorney, representing the  
Government of the United States, that there would be no further indictments or

prosecutions of the defendant for further alleged income tax evasions or for the offense of conspiring to obstruct or obstructing Federal justice in the Federal Court in connection with certain insurance litigation which had pended therein in the Central Division of the Western District of Missouri; that after much discussion between the U. S. District Attorney and counsel for the defendant, it was agreed between the defendant, acting through his counsel, and the United States of America, acting through the U.S. District Attorney, that, if this defendant would enter a plea of guilty to both counts of said indictment, the Government of the United States would agree that there should be no further indictments or prosecutions of this defendant for any Federal offenses theretofore committed and especially no indictment or prosecution of defendant for conspiring to obstruct or for obstructing Federal justice in the Federal court in connect with said insurance litigation or the settlement thereof, the very offense with which this defendant stands charged in this indictment herein.

At this conference, it was agreed in terms that, if this defendant entered a plea of guilty, that so far as any past Federal offenses committed by him, the slate should be wiped clean and there should be no further prosecution; that thereafter this defendant, relying upon the promise and agreement of the United States Government, through its U. S. District Attorney, and in pursuance of said agreement, did on the 22nd day of May, 1939, enter a plea of guilty to both counts of said indictment in the United States District Court for the Western Division of the Western District of Missouri before his Honor, the Honorable Merrill A. Otis; that after said plea of guilty had been entered by this defendant, and before sentence had been passed by the Court, the Honorable Maurice Milligan, U. S. District Attorney, in open Court, made a statement to the court reviewing the facts in the case and, in pursuance of the agreement theretofore made by him on behalf of the United States Government and defendant's counsel, told the Court that the Government would not further prosecute this defendant.

The language of the U. S. District Attorney on that occasion was, in part, as follows:

"In keeping with the practice of this Court, we do not attempt to suggest what sentence shall be imposed upon this defendant for his crimes. As is well-known to all, the assessment of punishment in this Court is the Court's sole prerogative, and so it should be. But we are nevertheless aware that this Court, in assessing punishment, always

received from the Government a statement of the offenses, beyond those with which the defendant at the time may be charged in the indictment, of which it has convincing evidence that he is guilty. Such offenses, we have always understood, this Court considers before ultimately assessing the penalty for the offenses with which the defendant stands charged, where, of course, the Court is assured that it is not the intention of the Government further to prosecute the defendant. \*\*\*\* Furthermore, as we have observed, already, the defendant, during the course of the investigation, has obstructed justice and suborned perjury, and, what seems to us the most subversive of all his offenses, he procured R. E. O'Malley, a public official, to palm off a fraudulent and corrupt settlement of the fire insurance rate litigation on this Court as an untainted and legitimate one, he has sought to make a mockery of its processes, and is guilty of a most flagrant contempt. Believing that the Court will consider these additional offenses in assessing the defendant's punishment for the offenses which he admits committing, as we understand the rule to be, we desire now to state that there will be no further criminal prosecution against the defendant for these additional offenses, and, of course, this is just, since they are here to be taken into account by the Court in assessing the defendant's punishment, and, in justice, should, therefore, not be presented against him again."

Defendant further says that after said statement had been made by the U.S. District Attorney and defendant's counsel had been heard, His Honor Judge Merrill E. Otis sentenced the defendant as follows:

"Count I

It is the sentence and judgment of the Court, upon the plea of guilty to Count I of the indictment, that the defendant, Thomas J. Pendergast, be committed to the custody of the Attorney General to be confined in a federal penitentiary during the period of one year and three months.

It is the intention of the Court that this sentence shall be served, except as hereafter it may lawfully be modified either by the Federal Board of Paroles or by the Chief Magistrate. The sentence will not be modified by the Court.

The service of this sentence will begin immediately upon the conclusion of the pronouncement of sentence as to Count II, unless the Attorney General shall otherwise

direct.

## Count II

It is the intention of the Court to grant probation as to the sentence imposed in connection with Count II.

It is the sentence and judgment of the Court, upon the plea of guilty to Count II of the indictment, that the defendant, Thomas J. Pendergast, shall pay a fine of \$10,000 and that he shall be committed to the custody of the Attorney General, to be confined in a federal penitentiary during a period of three years. The service of this sentence is suspended and the defendant is placed on probation for a period of five years, which period of probation shall begin on the day when the defendant is released from actual institutional custody under the sentence imposed in connection with Count I."

The Court then and thereafter fixed certain conditions of parole.

Defendant further says that, in pursuance of said sentence and judgment of the Court, this defendant paid the fine assessed on Count II of the indictment, served the entire sentence on Count I, except time off for good behavior, in the Federal penitentiary at Leavenworth, Kansas, and since his release therefrom has faithfully kept and performed all the conditions and terms of his parole.

This defendant says that, because of all the foregoing, public policy and the ends of justice require that the agreement between this defendant and his counsel and the public prosecutor, the United States District Attorney, shall be carried out; that, because of said agreement and defendant's plea of guilty entered upon faith thereof, defendant has a fixed, equitable right to executive clemency, which may be exercised by a pardon extended by the Executive Department or by a nolle prosequi by the Attorney General of the United States or the United States District Attorney.

WHEREFORE, this defendant prays the Court that the Court will continue this cause until an application may be made to the Attorney General of the United States or to the United States District Attorney for the Western Division of the Western District of Missouri that a nolle prosequi be entered herein or that an application may be made to the Chief Executive of the United States for a pardon and until such time as the Executive Department of the Government shall act therein, all to the end that the agreement heretofore made may be in good faith carried out and that justice may be

done.

RR Brewster

John G. Madden

Attorneys for Defendant, T. J. Pendergast

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Filed Nov. 18-1940

A. L. Arnold, Clerk

By HC Spaulding, DC

John G. Madden, R. R. Brewster,

Attys for T. J. Pendergast.